IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 478 of 2007()

(CR.NO.146/2004 OF PALARIVATTAM POLICE STATION OF ERNAKULAM DISTRICT)

PETITIONER/ACCUSED:

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1. MR.MURALEEDHARAN , AGED 57 YEARS,
EDATHIPARAMBIL HOUSE, 32 COLONY,
PULLUT CHAPPARA DESAM, KODUNGALLUR, THRISSUR.

2. MRS.THANKA, AGED 55 YEARS,
W/O.MURALIDHARAN, EDATHIPARAMBIL HOUSE,
32 COLONY, CHAPPARA DESAM, KODUNGALLUR, THRISSUR.

BY ADV. SRI.S.MOHAMMED ALRAFI.
SRI.K.J.NASARUL ASLAM.

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE OF THRISSUR WEST
POLICE STATION THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.478 of 2007

Dated this the 23rd day of February 2007

O R D E R

The petitioner, along with the co-accused, faces allegations in a sessions offence. Allegations under Section 302 and 498A read with 34 I.P.C are raised against the accused persons. Final report has already been filed. Cognizance has been taken. The learned Magistrate has committed the case to the court of Session. The court of Session has taken cognizance. The petitioners have also appeared before the learned Sessions Judge.

2. The short contention of the petitioners is that they do not deserve to stand trial before the Sessions Court and at worst, the allegations raised against them, even if accepted in toto, are only offences which can be tried by the learned Magistrate. In these circumstances, committal to the court of Session is unnecessary. They should not be compelled to stand trial along with the co-accused before the court of Session. This, in short, is the plea.

2. The petitioners, admittedly, have already appeared before the learned Sessions Judge. Charges have not been framed. The petitioners have the option to urge the contention before the learned Sessions Judge and contend that charges against them are not liable to be framed before the Sessions Court. The petitioners can contend that jointer of charges is unjustified and that the trial against them must be conducted only by a Magistrate for which purpose powers under Section 228 Cr.P.C must be invoked and the matter in so far as it relates to the petitioners has to be sent to the learned Magistrate.

3. The learned counsel for the petitioner relying on the decision in Abraham Ajith v. Inspector of Police, Chennai [(2004) 8 SCC 100] contends that the petitioners are not liable to stand trial along with the co-accused in view of Section 177 Cr.P.C.

4. The crucial question is whether the powers under Section 482 Cr.P.C can or deserves to be invoked by this court at this stage. In every case, where a person can claim discharge or acquittal from the trial court, it is not necessary that this court must invoke its powers under Section 482 Cr.P.C. This is not because this court does not have jurisdictional competence

under Section 482 Cr.P.C; but it is for the court to identify a fit case where the powers under Section 482 Cr.P.C can and must be invoked. Normally parties can be relegated to the remedies available under the code and only in an exceptional case where the conscience of the court is justified that the interests of justice would fail or that there would be miscarriage of justice need this court to invoke its powers under Section 482 Cr.P.C. It is unnecessary to flood this court with petitions under Section 482 Cr.P.C when identical relief can be claimed from the court before which the parties have already entered appearance. There is no exceptional or compelling reasons in this case qualifying such invocation. It is in this view of the matter that I take the view that this is not a case where the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C can or need be invoked. The petitioners can certainly raise the contention before the learned Sessions Judge that charges are not liable to be framed against them and trial is not at any rate liable to be held against them before Sessions Court and they deserve to be tried only before the learned Magistrate.

5. This Criminal Miscellaneous Case is, in these circumstances, dismissed but with the above specific observations. The learned Sessions Judge must consider the plea of the petitioners that they do not deserve to stand trial before the learned Sessions Judge.

6. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the accused by the learned Sessions Judge, it would cause the petitioners great prejudice, hardship and loss. I have no reason to assume that the learned Magistrate would do the same unless absolutely essential. No criminal court need ritualistically insist on the personal presence of the petitioners unless absolutely essential for the progress of the case.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006